

USDOL/OALJ Reporter

[*Tan v. Deborah Research Institute*](#), 94-ERA-31 (Sec'y Nov. 28, 1994)

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DATE: November 28, 1994
CASE NO. 94-ERA-31

IN THE MATTER OF

DR. ZHONGTUO TAN,

COMPLAINANT,

v.

DEBORAH RESEARCH INSTITUTE,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties submitted a Settlement Agreement and General Release seeking approval of the settlement and dismissal of the complaint. The Administrative Law Judge (ALJ) issued a decision on October 14, 1994, recommending that the settlement be approved. Because the request for approval is based on the agreement entered into by the parties, I must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. See pages 2-4. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate and reasonable

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settlement of the Complainant's allegations that the Respondent

violated the ERA.

Pages 2-4 of the agreement could be construed as a waiver by the parties of any causes of action they may have which arise in the future. As the Secretary has held in prior cases, see *Johnson v. Transco Products, Inc.*, Case No. 85-ERA-7, Sec. Ord. Approving Settlement, Aug. 8, 1985, such provisions must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. See also *Alexander v. Gardner-Denver Co.*, 45 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir. 1986).

Page 5 contains language which provides that the Complainant and his attorney

shall keep confidential and shall make no disclosure of or reference to the existence or terms of this Settlement Agreement and General Release [Except] [s]hould either party be required to explain the facts surrounding the separation of Dr. Tan because of Department of Labor publication of information relating to his claim, or because of other legal proceedings, it will be able to do so.

The parties' submissions, including the agreement become part of the record of the case and the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. [1] See *Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Ord. Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3 and cases there cited.

Additionally, language on page 6 of the agreement provides that the laws of Pennsylvania shall govern this agreement. This provision is interpreted as not limiting the authority of the Secretary or the United States district court under the applicable statutes and regulations.

I find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, I APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time

to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. §70.26(h).